

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 95-0665 ST
Sales/Use Tax
For The Tax Periods: 1992 through 1994**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. **Sales/Use Tax**: Taxability of Foods and Dietary Supplements

Authority: IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-2.5-3-2

Taxpayer protests assessment of sales and use tax on products for which tax was not collected.

II. **Interest**

Authority: IC 6-8.1-10-1

Taxpayer protests the imposition of interest.

STATEMENT OF FACTS

Taxpayer is a wholesaler/manufacturer of nutritional, personal care and household products. Taxpayer sells some products that are considered tax-exempt as food for human consumption. Taxpayer also sells products that are considered dietary supplements and are not exempt from sales and use tax.

I. **Sales/Use Tax**: Taxability of Foods and Dietary Supplements

DISCUSSION

Pursuant to IC 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana. IC 6-2.5-4-1 provides that a retail transaction involves the transfer of tangible personal property. Pursuant to IC 6-2.5-3-2, "an excise tax, known as the use tax, is

imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.”

Taxpayer requested a ruling from the Department on August 21, 1992. Taxpayer received a ruling on January 19, 1995. In the absence of any guidance from the Department, during the audit period, taxpayer made their own determination of the taxability of various foods and dietary supplements. Taxpayer collected and remitted tax erroneously on one product and failed to collect and remit tax on other products. These circumstances resulted in the assessment of sales and use tax not paid by the taxpayer.

Taxpayer contends that because they did not receive a ruling from the Department on the taxability of their products until after the audit period, the tax assessment should be waived. However, despite the taxpayer’s conscientious attempts to obtain guidance from the Department, taxpayer’s liability is not precluded by the Department’s delay in issuing a ruling.

FINDING

Taxpayer’s protest is denied.

II. Interest

DISCUSSION

Pursuant to IC 6-8.1-10-1, except as provided by IC 6-8.1-5-2(e)(2), the Department may not waive interest.

FINDING

Taxpayer’s protest is denied.